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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA NEIL HARRELL,
Plaintiff,
v.
SOLANO COUNTY JAIL, et al.,
Defendants.

No. 2:14-cv-1690 CKD P

ORDER

Plaintiff is a county jail inmate proceeding pro se and in forma pauperis. Before the court for screening is plaintiff’s First Amended Complaint. (ECF No. 14.)

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

In order to avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim

1 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
2 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
3 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.
4 at 1949.

5 Here, plaintiff alleges that defendant Officer O’Weary at the Solano County Jail denied
6 him a dinner tray, threatened to beat him, and “threw away” his inmate appeals, which were
7 “never seen again,” such that plaintiff had to re-write his appeals. (ECF No. 14 at 4-5.)

8 An inmate may state a cognizable First Amendment claim based on retaliation for
9 protected conduct, such as filing administrative grievances. To prevail on a First Amendment
10 retaliation claim, plaintiff must show: (1) an adverse action against him; (2) because of; (3) his
11 protected conduct, and that such action; (4) chilled his exercise of his First Amendment rights;
12 and (5) the action did not reasonably advance a legitimate correctional goal. Rhodes v. Robinson,
13 408 F.3d 559, 567–68 (9th Cir. 2005). Here, plaintiff’s allegations are too vague and conclusory
14 to state a First Amendment claim against O’Weary.

15 Plaintiff further alleges that “[a]s a result of filing this grievance, [defendant Classification
16 Officer Dessel] moved me out of the dorm to cell living subject to 20+ hour a day lockdown.”
17 (ECF No. 14 at 5.) Without more, this conclusory allegation also fails to state a First Amendment
18 claim.

19 Plaintiff’s allegations against Sheriff Ferrara and the Solano County jail fail to cure the
20 defects of the original complaint. (See ECF No. 4 at 3-5.) Nor does plaintiff state a cognizable
21 §1983 claim against any other defendant.

22 The court will grant plaintiff one final opportunity to amend in an attempt to state a claim.
23 Failure to timely file an amended complaint will result in a recommendation that this action be
24 dismissed.

25 In accordance with the above, IT IS HEREBY ORDERED that:

- 26 1. The First Amended Complaint (ECF No. 14) is dismissed with leave to amend; and
- 27 2. No later than thirty days from the date of this order, plaintiff shall file a Second
28 Amended Complaint that complies with all applicable rules. (See ECF No. 4.) Failure to do so

1 will result in a recommendation that this action be dismissed.

2 Dated: April 14, 2015



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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